

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Carlton James Mathis,

Plaintiff,

VS.

Stephen Fuller, Chuck Lister, Steve  
Adwell, Steve Greene, Peter Schafter,  
and Pete Meffert,

Defendants.

C/A No.: 1:12-2565-CMC-SVH

## ORDER

This matter comes before the court on defendants' motion to dismiss and/or file responsive pleadings out of time [Entry #19]. In their motion, defendants argue that the complaint should be dismissed for Plaintiff's alleged failure to properly serve the summons and complaint in this matter pursuant to Fed. R. Civ. P. 12(b)(5) because the certified mail return receipt was not signed by a person authorized to accept service of process for the defendants.

In light of the procedural history of this case, defense counsel is directed to indicate to the court by January 30, 2013, by a filing on the docket, whether he can accept service of process on behalf of defendants or whether defendants will waive service. If defendants accept or waive service, this case will proceed on the merits. Additionally, the undersigned will likely deny Plaintiff's pending motions for default judgment [Entry #17] and entry of default [Entry #22] and defendants' motion to dismiss will be rendered moot. If defendants do not accept or waive service, the court will determine whether they have met the burden of proof in showing that they were not properly served in this

matter. In the event that the court determines defendants have not been properly served, the court will likely grant Plaintiff additional time to serve defendants and permit discovery on the same, if necessary.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Shiva V. Hodges". The signature is written in a cursive, flowing style.

January 16, 2013  
Columbia, South Carolina

Shiva V. Hodges  
United States Magistrate Judge